

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MARK HANSEN and JASON BUFFER,

Plaintiffs,

vs.

UNITED AIRLINES, INC.,

Defendant.

No. 1:20-CV-02142

Hon. Thomas M. Durkin

**UNITED AIRLINES, INC.’S MOTION TO STAY DISCOVERY  
PENDING RULING ON ITS MOTION TO STRIKE CLASS ALLEGATIONS**

Defendant United Airlines, Inc. (“United”) hereby moves pursuant to Federal Rule of Civil Procedure 26(c)(1) for a stay of discovery pending ruling on its Motion to Strike Class Allegations (Dkt. 73). In support thereof, United states as follows:

**I. BACKGROUND**

1. On July 29, 2020, Plaintiffs Mark Hansen and Jason Buffer, and former Plaintiff Jacob Rudolph, filed their Consolidated Class Action Complaint, seeking to assert a claim for breach of contract on behalf of the following proposed class:

All persons in the United States that purchased tickets for travel on United Airlines flights scheduled to operate to, from, or within the United States from March 1, 2020, to the date of class certification and who were not issued a refund for canceled and/or significantly changed flights on which the passenger did not travel.

(Consol. Compl. ¶ 85, Dkt. 41).

2. On September 14, 2020, United moved to dismiss Plaintiffs’ Consolidated Class Action Complaint in its entirety (Dkts. 44, 45).

3. On February 12, 2021, the Court issued its Memorandum Opinion and Order on United’s motion to dismiss (Dkt. 65), granting United’s motion in part and denying it in part.

4. On February 16, 2021, Plaintiffs informed the Court during a status hearing that they would not be filing an amended complaint (Dkt. 66).

5. On March 12, 2021, United filed its Answer and Additional Defenses (Dkt. 72), and moved to strike the class allegations in Plaintiffs' Consolidated Class Action Complaint pursuant to Federal Rule of Civil Procedure 23 (Dkts. 73, 74).

6. On March 15, 2021, the Court entered the parties' agreed briefing schedule on United's Motion to Strike Class Allegations. (Dkt. 75.) Pursuant to that order, Plaintiffs will file their response by April 2, 2021, and United will file its reply by April 23, 2021.

## II. ARGUMENT

7. The Federal Rules of Civil Procedure vest district courts with wide discretion regarding discovery matters, including controlling the timing, scope, and manner of discovery. *See, e.g., Geiger v. Aetna Life Ins. Co.*, 845 F.3d 357, 365 (7th Cir. 2017) ("Trial courts retain broad discretion to limit and manage discovery under Rule 26 of the civil rules.") (internal quotations and brackets omitted); *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs., Inc.*, 755 F.3d 832, 839 (7th Cir. 2014) ("District judges enjoy broad discretion in settling discovery disputes and in delimiting the scope of discovery in a given case.") (internal quotations omitted); *DSM Desotech Inc. v. 3D Sys. Corp.*, No. 08 CV 1531, 2008 WL 4812440, at \*1 (N.D. Ill. Oct. 28, 2008) ("District courts enjoy extremely broad discretion in controlling discovery.").

8. The Court's right to exercise this discretion is particularly important in cases like this one, where the Consolidated Class Action Complaint alleges a proposed nationwide class potentially including thousands of individuals, causing discovery to be unusually burdensome and costly. *See Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 759 (7th Cir. 2000) (recognizing that district courts are given substantial discretion "to control the course of class action litigation"

because “it is well-recognized that class actions present opportunities for abuse as well as problems for courts and counsel in the management of cases”) (internal quotations omitted); *Mars Steel Corp. v. Cont’l Ill. Nat’l Bank & Tr. Co. of Chi.*, 834 F.2d 677, 683-84 (7th Cir. 1987) (affirming district court’s discovery rulings as “within the district judge’s broad discretion in managing a class action”); *Rustom v. Rustom*, No. 17 C 9061, 2018 WL 2423508, at \*5 (N.D. Ill. May 29, 2018) (noting the issues presented in complex cases weigh in favor of more careful management of discovery).

9. In evaluating a motion to stay discovery, courts “should balance the competing interests of the parties and the interest of the judicial system” by evaluating whether the stay will: (1) “simplify the issues in question”; (2) “reduce the burden of litigation on the parties and on the court”; and (3) “unduly prejudice or tactically disadvantage the non-moving party.” *Sadler as Trustee of Larry R. Sadler Irrevocable Tr. v. Retail Props. of Am., Inc.*, No. 12 C 5882, 2013 WL 12333447, at \*1 (N.D. Ill. Sept. 27, 2013) (citing *Landstrom v. Ill. Dep’t of Child. & Family Servs.*, 892 F.2d 670, 674 (7th Cir. 1990) (explaining that a stay of discovery may be appropriate when a party raises a potentially dispositive threshold issue)); *Sterigenics U.S., LLC v. Kim*, No. 19 C 1219, 2019 WL 10449289, at \*2 (N.D. Ill. Mar. 8, 2019) (internal citations omitted). All three factors weigh in favor of a stay here.

10. First, a stay will simplify the issues in this case, as it will allow an opportunity for the Court to clarify whether Plaintiffs are entitled to class discovery or whether they may only seek discovery as to their individual claims against United. *See, e.g., Sadler*, 2013 WL 12333447, at \*1 (granting motion to stay discovery where the pending motions “are potentially dispositive” and if granted, “the case could be over or significantly reduced”); *Gekas v. Vasiliades*, No. 10-3066, 2012 WL 5948679, at \*\*1-2 (C.D. Ill. Nov. 28, 2012) (granting motion to stay discovery where

the pending motion “will clarify the issues and may resolve or narrow the issues,” enabling plaintiff to “conduct discovery more efficiently”).

11. As detailed in United’s Motion to Strike and Memorandum in Support, Plaintiffs’ proposed class in their Consolidated Class Action Complaint cannot be certified because it is facially overbroad, and because Plaintiffs cannot satisfy either the commonality requirement of Rule 23(a)(2) or the predominance requirement of Rule 23(b)(3). (*See* Mem. in Support of United’s Mot. to Strike Class Allegations at 7-14, Dkt. 74.) If granted, United’s Motion to Strike will, at a minimum, dramatically impact the permissible scope of discovery in this case by limiting discovery to information relevant to the specific claims of the two named plaintiffs, Mark Hansen and Jason Buffer. Indeed, given that Hansen and Buffer have already received full refunds, striking the class allegations should dispose of this action entirely. (*See* Defendant’s Answer and Additional Defenses ¶ 3, Dkt. 72 (“United further states that Plaintiffs Hansen and Buffer have been fully refunded for their flights alleged in the Complaint.”).)

12. Second, a stay will reduce the burden of litigation on the parties and on the Court. The burden on United is particularly great here because Plaintiffs have already served upon United their First Requests for Production of Documents (“Plaintiffs’ First RFPs,” attached hereto as Ex. 1), which include such broad and far-reaching requests as:

**REQUEST FOR PRODUCTION NO. 4:** Produce all documents created, received, or sent since October 1, 2019 regarding any questions, complaints, or grievances received from Your customers relating to Your failure to give customers a refund for a flight cancelled and/or significantly delayed by You as a result of the coronavirus pandemic including, but not limited to, legal complaints, complaints to customer service, and/or complaints to or from regulatory agencies, your responses thereto, and internal documents regarding any such questions, complaints or grievances. [...]

**REQUEST FOR PRODUCTION NO. 13:** Produce all documents created, received, or sent at any time regarding any analysis of the advantages and/or drawbacks to You and/or Your customers based on providing a credit or voucher

rather than a refund for flights cancelled and/or significantly delayed as result of the coronavirus pandemic. [...]

**REQUEST FOR PRODUCTION NO. 21:** Produce all documents and/or data identifying Your flights cancelled and/or significantly delayed starting March 1, 2020.

Ex. 1 at 7-8, 10, 12.

13. United should not be required to incur the substantial burden and expense of responding to Plaintiffs' extraordinarily broad and onerous requests prior to a ruling on the Motion to Strike Class Allegations, which if granted will (at a minimum) "greatly affect the course and scope of discovery" in this case.<sup>1</sup> *Sadler*, 2013 WL 12333447, at \*1 (granting stay where "the broad scope of discovery sought by the Plaintiffs would be both onerous and costly," and "[a]ny ruling in the Defendants' favor on [the pending motions] could greatly affect the course and scope of discovery taken"); *Sprague v. Brook*, 149 F.R.D. 575, 578 (N.D. Ill. 1993) (granting stay "in order to secure the just, *speedy* and *inexpensive* determination of [this] action") (emphasis in original, internal quotations omitted).

14. Indeed, courts routinely stay discovery while a motion to strike class allegations is pending for this very reason. *See, e.g., E&G, Inc. v. Am. Hotel Register Co.*, No. 17-CV-1011, Dkt. 18 (N.D. Ill. Apr. 6, 2017) (granting defendants' motion to stay discovery pending ruling on motion to strike class allegations); *see also Little v. Midland Credit Mgmt., Inc.*, No. 2:19-cv-5419, 2020 WL 4745191, at \*3 (S.D. Ohio Aug. 17, 2020) (ordering stay of discovery where defendant would otherwise "suffer harm in having to unnecessarily incur the time and expense of producing discovery pertaining to an impermissible class"); *Hedgepeth v. Blue Cross & Blue Shield of Miss.*,

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<sup>1</sup> United does not concede that any of Plaintiffs' requests are proper, regardless of how the Court rules on the Motion to Strike Class Allegations, and does not waive its right to object to those requests under Rule 26 or any other grounds.

No. 1:05CV142-D-A, 2005 WL 8163352, at \*1 (N.D. Miss. Nov. 21, 2005) (staying all discovery pending ruling on defendant’s motion to strike class allegations because “there remains little utility in allowing the plaintiff to conduct any class-related discovery until such time as the district court addresses the pending motion.”).

15. Moreover, courts in this District frequently order a stay of discovery where the pending motion is potentially dispositive as to the claims underlying the discovery. *See, e.g., Sadler*, 2013 WL 12333447, at \*1 (staying discovery where the motions “currently before the Court are not frivolous and are potentially dispositive”); *DSM Desotech, Inc.*, 2008 WL 4812440, at \*\*2-3 (staying discovery of antitrust and state law claims pending ruling on defendant’s motion to dismiss those claims); *Sprague*, 149 F.R.D. at 577 (“In light of the issues raised by [defendant] in its motion to dismiss, which may dispose of this case in its entirety, and because the plaintiffs’ discovery requests are irrelevant to such issues, discovery at this time cannot be justified.”). Plaintiffs’ First RFPs contain 31 requests, only two of which seek discovery specific to Plaintiffs’ individual claims. United’s Motion to Strike Class Allegations, if granted, would thus be dispositive of the claims underlying the overwhelming majority of requests in Plaintiffs’ First RFP.

16. Third, a stay will not prejudice or tactically disadvantage Plaintiffs. If ordered, the stay will end as soon as the Court rules on United’s Motion to Strike Class Allegations, which is already subject to the Parties’ agreed briefing schedule. Plaintiffs do not need discovery to respond to the motion, as it is premised solely upon the pleadings in this case and the Court’s previous ruling on United’s Motion to Dismiss. *See Gekas*, 2012 WL 5948679, at \*2 (ordering stay where plaintiff “does not need discovery to respond” to the pending motion); *Sprague*, 149 F.R.D. at 577-78 (similar). Nor is there any risk that discoverable documents or information will become stale or that witnesses’ memories will fade, as the events at issue in this case occurred in 2020 or later.

*See Sadler*, 2013 WL 12333447, at \*1 (finding no prejudice where defendant “are aware of the pending lawsuits and that the nature of the lawsuits requires them to preserve the pertinent documents at issue in the case” and thus plaintiffs “may obtain the documents at a later date, if necessary and permissible”); *see also City of Chicago v. Janssen Pharm. Inc.*, No. 14-cv-04361, 2015 WL 13448016, at \*1 (N.D. Ill. Sept. 30, 2015) (finding no prejudice where “there is no suggestion that discovery ... would be destroyed or lost if discovery did not commence immediately”). Finally, the need for clarity and to reduce the burden upon the Parties and the Court outweigh any interest that Plaintiffs may have in proceeding with discovery before resolution of United’s motion.

17. In the alternative, should the Court decline to stay all discovery, United requests that the Court stay discovery related to Plaintiffs’ class allegations pending the outcome of its Motion to Strike. Such relief promotes efficiency by allowing Plaintiffs to conduct discovery on their individual claims, while simultaneously shielding United from expensive, burdensome, and likely unnecessary discovery. *See, e.g., Hill v. Chase Bank, NA*, No. 2:07-CV-82-AS, 2007 WL 4224073, at \*5 (N.D. Ind. Nov. 26, 2007) (staying class-based discovery because if defendant’s motion is granted “class discovery may be unnecessary” and a “stay of class based discovery will encourage the most efficient use of the parties’ time and effort”); *Wilson v. McDonald’s Corp.*, No. 14-11082, 2015 WL 13047572, at \*3 (E.D. Mich. Apr. 28, 2015) (staying class-based discovery because “Defendants’ motion to strike the class allegations in the complaint, if successful, is dispositive of plaintiffs’ class claims against defendants in this lawsuit,” and “the burden on defendants in having to engage in class discovery while dispositive motions are pending on the class claims outweighs the potential prejudice to plaintiffs in delaying such discovery”).

18. United's counsel conferred via email with Plaintiffs' counsel regarding the requested stay of discovery. Plaintiffs oppose the requested relief and have stated that they intend to oppose this motion.

### III. CONCLUSION

WHEREFORE, United requests that the Court grant its Motion to Stay Discovery and enter an order staying all discovery pending resolution of its Motion to Strike Class Allegations. In the alternative, United requests that the Court enter an order limiting discovery to information relevant to the specific claims of the two named plaintiffs, Mark Hansen and Jason Buffer, pending ruling by the Court on United's Motion to Strike.

Dated: March 22, 2021

Respectfully submitted,

*/s/ Sondra A. Hemeryck*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2021, I caused a true and correct copy of the foregoing to be filed using the electronic filing (CM/ECF) system, which will generate notice of this filing to all counsel of record.

*/s/ Sondra A. Hemeryck* \_\_\_\_\_